ZALIK SECURITIES

v.

JOHNNY LIM CHIN TEIK

HIGH COURT MALAYA, KUALA LUMPUR
DATO' HAJI ABDUL MALEK BIN HAJI AHMAD J
[CIVIL SUIT NO. D5-22-395-94]
31 NOVEMBER 1994

***INJUNCTION**: Plaintiff obtaining injunction restraining defendant from dealing with his assets - Injunction granted ex parte - Whether there was a requirement that plaintiff should file an inter parte application within two weeks of the service of the order.*

***INJUNCTION**: Plaintiff obtaining ex parte Mareva injunction - Injunction restraining defendant from dealing with his assets - Whether there was an arguable case - Whether there was a risk that the assets would be dissipated - Whether a Mareva injunction can be granted against a defendant resident in the country - Injunction also restraining defendant's wife from dealing with moneys in her bank account - Whether a Mareva injunction can be granted against a third party - Defendant's application to set aside injunction - Whether should be allowed.*

The defendant was at all material times an employee of the plaintiff carrying out his duties as Head of the Settlement Department. In that capacity the defendant was the only person empowered to authorise the transfer or cause to be transferred monies from one customer's account to another and from the customers' accounts to the plaintiff's accounts and *vice versa* on the instructions of the customer.

While the defendant was on leave the plaintiff discovered that the defendant had wrongfully converted RM1.5 million belonging to the plaintiff. The plaintiff made an *ex parte* application, filed upon a certificate of urgency, for an injunction, *inter alia*, restraining the defendant and/or his servants or agents from dealing with his assets to the extent of RM1.5 million. The application also sought to restrain the defendant's wife from dealing with the account standing in her name in the D & C Bank to the extent of RM1.5 million.

The defendant filed an application to set aside the injunction and the question that arose on the *inter partes* hearing was whether there was an arguable case and whether there was a risk of dissipation of the assets if the order had not been made *ex parte*. It was also argued by the defendant that the order against his wife's account was improper as she was not a party to the action.

It was also in question whether it was necessary for the plaintiff to refile the *ex parte* application as an *inter partes* one.

Held:

[1] It would be impractical and quite unnecessary to file the same application again only by changing the word "*ex parte*" to "*inter parte*". For all purposes, since the defendant had been served and was in fact represented by Counsel on the returnable date, the order granted *ex parte* had become *inter parte* with both parties having appeared within the two weeks after the original *ex parte* order and without the need for the plaintiff to refile the *ex parte* application as an *inter parte* one. In short, O. 29 r. 1(2B) of the Rules of the High Court 1980 was no longer applicable.

[2] The affidavits filed on behalf of the plaintiff clearly show that the defendant had been transferring monies to and from different accounts maintained by the plaintiff without the instructions, knowledge or consent of either the plaintiff or the relevant customers. There was more than sufficient evidence to show that the transfers were done on the defendant's instructions and that it was actually the defendant who had authorised the said wrongful transfers.

[3] There was also evidence to show that the defendant had been living quite beyond his means. Having considered the defendant's income and expenses, and his manipulation of the plaintiff's accounts, it can easily be taken for granted that there is a strong risk of the assets being dissipated.

[4] The plaintiff had acted properly in filing for the *ex parte* injunction urgently as to do otherwise would have enabled the defendant to dispose of the assets accordingly although he was at that time under police custody. At that point of time the defendant was only on remand and could have been released at any time. He was therefore in the same position as a free man.

[5] Based on the statement of claim, the plaintiff's affidavits and the submissions of Counsel for the plaintiff and considering the submissions of Counsel for the defendant and the defendant's affidavits, the plaintiff had a good arguable case and there was indeed a risk of dissipation of the assets if the order had not been made *ex parte*. In the circumstances it was also essential to restrain any activity of the defendant's wife's bank account as although the account was in her name, it was quite clear that it was actually maintained by the defendant.

[6] There being no suppression of material facts, the balance of convenience lay in favour of the plaintiff for the injunction to be continued until the trial. In the circumstances, the defendant's application to set aside the injunction had to be and was dismissed with costs.

[Defendant's application dismissed with costs. Injunction ordered to be continued until trial of action. Early trial ordered].

Cases referred to:

Permodalan MBf Sdn. Bhd. v. Tan Sri Datuk Seri Hamzah bin Abu Samah & Ors. [1988] 1 MLJ 178 ***(refd)***

S & F International Limited v. Trans-con Engineering Sdn. Bhd. [1985] 1 MLJ 62 ***(refd)***

Pacific Centre Sdn. Bhd. v. United Engineers (Malaysia) Bhd. [1984] 2 MLJ 143 ***(refd)***

Chief Constable of Hampshire v. A and Ors. [1984] 2 All ER 385 ***(refd)***

Raja Letchumi a/p Ramarajoo v. The Hongkong & Shanghai Banking Corporation [1989] 1 MLJ 415 ***(refd)***

Prince Abdul Rahman Bin Turki Al Cedar v. Abu-Taxa & Anor. [1980] 3 All ER 409 ***(refd)***

Barclay-Johnson v. Yuill [1980] 3 All ER 190 ***(refd)***

Galaxia Maritime SA v. Mineralimportexport The Eleftherios [1982] 1 All ER 796 ***(dist)***

Bank of Queensland Ltd. v. Grant & Anor. [1984] 54 ALR 306 ***(dist)***

SCF Finance Co. Ltd. v. Masri & Anor. [1985] Vol. 2 All ER 747 ***(refd)***

Sari Artists Film Productions Sdn. Bhd. v. Malaysia Film Industries Sdn. Bhd. [1974] 1 MLJ 123 ***(dist)***

KSM Credit & Leasing Sdn. Bhd. v. Datamaute (M) Sdn. Bhd. & Ors. [1986] 1 CLJ 500 ***(dist)***

Legislation referred to:

Rules of High Court 1980, O. 29 r. 1(2B)

Supreme Court Act 1981, s. 37(1)

For the plaintiff - D.P. Naban; M/s. Lee Hishamuddin
For the defendant - M. Pathmanathan (Selvarajan with him); M/s. Yusuf Lee Pathma & Marbeck

JUDGMENT

Haji Abdul Malek bin Haji Ahmad J:

On 25 April 1994, I had granted, upon an undertaking for damages, an order in terms of the plaintiff's *exparte* application filed upon a certificate of urgency for:

a) the defendant whether by himself, his servants or agents, otherwise whosoever from parting or disposing of or dealing with and or removing or charging or assigning or otherwise dealing with any of his assets whatsoever within the jurisdiction of this Honourable Court to the extent of RM1,500,000;

b) in particular and without prejudice to the foregoing, the defendant be restrained from drawing from, charging or otherwise dealing with the account standing in his name in any branches of financial institutions operating and or carrying on business within the jurisdiction of this Honourable Court to the extent of RM1,500,000;

c) further and in particular and without prejudice to the foregoing, Audrey Keong Mei Cheng, the wife of the defendant, be restrained from drawing from, charging or otherwise dealing with the account standing in her name in the Development & Commercial Bank within the jurisdiction of this Honourable Court to the extent of RM1,500,000.

Pursuant to O. 29 r. 1(2B) of the Rules of the High Court 1980, I had adjourned the matter for two weeks. On 9 May 1994, learned Counsel for the defendant had appeared to state that since the original order was granted *exparte*, the plaintiff should have filed an *interparte* summons in chambers within the two weeks after service with the original returnable date given on the new summons in chambers as had been the practice in some of the other High Courts. I had, however, agreed with learned Counsel for the plaintiff that it would be impractical and quite unnecessary to file the same application again only by changing the word "*exparte*" to "*interparte*" and that for all purposes, since the defendant had been served and was in fact represented by Counsel on the returnable date, the order granted *exparte* had become *interparte* with both parties having appeared within the two weeks after the original *exparte* order and without the need for the plaintiff to refile the *exparte* application as an *interparte* one. In short, O. 29 r. 1(2B) was no longer applicable.

There was also no necessity in this situation, to my mind, for the defendant to file an application to set aside the order but they had done so. On 4 July 1994, learned Counsel for the defendant had asked for an adjournment as the papers had not been properly processed and on 27 July 1994, he had asked for a postponement to file an affidavit in reply. On both occasions, learned Counsel for the plaintiff had no objections to the adjournment.

On 19 September 1994, learned Counsel for the defendant had submitted that there was actually no urgency in the first place to hear the plaintiff's *exparte* application as the defendant was then in police custody and the plaintiff knew that. On that ground alone, he had submitted that the injunction should be set aside.

Further, he maintained that there must be a good arguable case and the risk of dissipation. At the most, he argued, there was only suspicion as the plaintiff was relying on a newspaper report of the defendant's arrest for criminal breach of trust of RM890,973.36 belonging to the plaintiff. He went on to state that the plaintiff's statement of claim was flawed and the defendant was innocent until proven guilty. He also added that the defendant did not live a

lavish lifestyle and there had been a suppression of material facts. In fact, he stressed that the situation was worse here as there had been positive misrepresentation by the plaintiff and the order had also implicated an innocent third party who was the defendant's wife.

It may be appropriate at this juncture to refer to the plaintiff's statement of claim. It had been pleaded that the defendant was at all material times an employee of the plaintiff carrying out his duties as Head of the Settlement Department which was the department responsible for the receiving and payment of monies from and to the plaintiff's customers and the crediting and debiting of both the customers' and the plaintiff's accounts arising from the buying and selling of shares by the customers.

It has also been specifically stated that the defendant in that capacity was the only person empowered to authorise the transfer or cause to be transferred monies from one customer's account to another and from the customer's accounts to the plaintiff's accounts and *vice versa* on the instructions of the customer.

While the defendant was on leave in the United States of America on his honeymoon, the plaintiff had discovered that the defendant had wrongfully converted RM1.5 million belonging to the plaintiff by wrongfully withdrawing a sum of RM750,000 from the account of one Samseah Mohammed on 16 February 1994 and a further sum of RM750,000 from the account of one Haslinah Hassan on 25 February 1994, both being the plaintiff's customers.

The said RM1.5 million belonged to the plaintiff as placement fees upon the disposal of shares in the two accounts and should have been transferred to the plaintiff's account. On 8 March 1994, the defendant transferred or caused to be transferred the said RM1.5 million to the account of one Madam Teoh See Eng, another of the plaintiff's customers. This was to replace the monies wrongfully taken by the defendant from Madam Teoh's account between November 1993 and March 1994 without her instructions, knowledge or consent. The money had in fact been utilised in part for the purpose of trading in shares in two of the accounts opened with the plaintiff in the name of the defendant's brother Danny Lim Say Leong and the defendant's sister Lim Liew Suan.

After the discovery of the defendant's wrongdoing, the plaintiff had by letter dated 13 April 1994 suspended the defendant from his duties with immediate effect. On 5 May 1994, the defendant had been charged in the Kuala Lumpur Sessions Court for criminal breach of trust of RM890,973.

Learned Counsel for the plaintiff had enunciated that the case was not based on suspicion as it is a matter of fact that the defendant had caused the transfer of monies belonging to the plaintiff in Samseah's and Haslinah's accounts into Madam Teoh's to replace the money wrongfully taken by the defendant from Madam Teoh's account. He said that it was not necessary to show a crystal clear case against the defendant but only a good arguable one. He added that the plaintiff was earning less than RM5,000 per month with a non-working wife but yet had two cars, two properties and a substantial amount of shares, among other things.

Learned Counsel had further submitted that the urgent application was in fact necessary as if the defendant had got wind of the application, he would have easily dissipated the assets through an agent. As for the injunction against the defendant's wife, he argued that it only affected the account at the Development & Commercial Bank and not all of her assets and in any case she was at liberty to apply for its discharge which she had not.

The affidavits filed on behalf of the plaintiff clearly show that the defendant had been transferring monies to and from different accounts maintained by the plaintiff without the instructions, knowledge or consent of either the plaintiff or the relevant customers. The plaintiff had also through the affidavits filed by its Financial Manager, its General Manager, Finance and Operations, its clerk in the Settlement Department and its remisier, stated that the transfer of the RM750,000 each from Samseah's and Haslinah's accounts to Madam Teoh's account was to cover the shortfall caused by the transfer of monies from Madam Teoh's account to the defendant's brother's and sister's accounts and that it was done on the defendant's instructions. I was more than satisfied that it was actually the defendant who had authorised the said wrongful transfers.

There is also ample evidence that the defendant had been living quite lavishly. It is not disputed that the defendant was earning RM5,000 a month while working for the plaintiff with monthly deductions of RM500 for the Employees' Provident Fund and RM145 for income tax and that his wife was not working. In his own affidavit, the defendant had admitted that he had:

(a) property known as Block H-07-409, Jalan 1A, Phase 2A, Taman Segar, 56100 Kuala Lumpur;

(b) Toyota Corolla 1.3 G.L. Registration No. WBM 9623;

(c) Mazda 626 Registration No. WDH 6346;

(d) property known as Lot 173, 13 Bukit Rahman Putra Phase 2, PIP, Bukit Rahman Putra;

(e) membership to Club Rahman Putra No. L0387-00;

(f) shares:

(i) 30,000 shares in Damansara Berhad;

(ii) 9,000 shares in UCM;

(iii) 100,000 shares in Seteras Berhad;

(iv) 20,000 shares in Mulpha

(v) 7,000 shares in Mulpha rights;

(g) Public Bank Savings Account 40-03-30249-3 where an approximate sum of RM4,000 is in credit;

(h) Maybank Savings Account No. 1-14280-124083 wherein a sum of RM1,791.30 is remaining.

Apart from that, the plaintiff's Financial Manager had affirmed that it was quite beyond the defendant's financial means to hold his wedding dinner at the Hotel Istana and to spend his honeymoon in the United States of America. The defendant had explained in his affidavit that the so-called lavish wedding banquet at the Hotel Istana had cost him RM20,770 but he had received "ang pows" amounting to almost RM19,000 to pay for it. His honeymoon expenses in the United States had come to RM9,782 which he had duly paid for by credit card. He had also stated that he had received RM30,000 as the annual bonus for 1993. There is of course no way to disbelieve the money gifts amounting to RM19,000 although I would say it is quite unlikely, although not impossible, for him to have got that amount. That aside, and to give him the benefit of the doubt, his annual bonus alone would have paid for his wedding and honeymoon expenses.

However, he had also exhibited his list of living expenses which is reproduced below:

MONTHLY EXPENSES

1.	Instalments on House. Block H-07-409 Jln 1A Phase 2A Taman Segar 56100 Kuala Lumpur	RM 359.00
2.	Maintenance Fees	RM 42.50
3.	Car instalment WDH 6346	RM 795.00
4.	Electricity Bill (average)	RM 20.00
5.	Telephone Bill No. 9315073 (average)	RM 40.00
6.	Mobile Phone Bill No. 010-214081	RM 100.00
7.	Water Bill (average)	RM 10.00
8.	Insurance Premium Life (Sime)	RM 484.84
	Personal Accident	RM 48.96
9.	Park Royal Fitness Centre	RM 100.00
10.	Groceries & Misc. (i.e., medical) expenses, hair cuts, allowance to parent etc.)	RM 500.00
11.	Petrol	RM 150.00
12.	Breakfast (RM6 for 2 people)	RM 200.00
13.	Lunch (RM10 for 2 people)	RM 300.00
14.	Dinner (RM10 for 2 people)	RM 300.00
	Total	RM3450.30

It is relevant to note that the list makes no mention of the second property, the second car and the membership expenses at the second club. With the so-called balance left over monthly, how did he come to acquire a total of 166,000 shares in a number of public listed companies? Even at a minimal figure of RM1 per share, this would amount to quite a substantial sum. It is quite evident that the defendant could not have owned what he now owns with a balance of about RM1,500 left over considering the other assets he had left out and the pay he was getting and the properties he had acquired. He was, therefore, in my opinion, living quite beyond his means and the injunction was therefore quite in order to prevent any possible dissipation of the assets. Since his wife was not working and her other sources of income had not been specifically stated, it can also be safely assumed that her account is actually the defendant's but in her name.

The Supreme Court in *Permodalan MBf Sdn. Bhd. v. Tan Sri Datuk Seri Hamzah bin Abu Samah & Ors.* [1988] 1 MLJ 178, had ruled that an *exparte* application for an injunction may be made by the plaintiff only and in a case of urgency. Some three years earlier, the Federal Court in *S & F International Limited v. Trans-con Engineering Sdn. Bhd.* [1985] 1 MLJ 62

had held that the discretion whether or not to gant an interlocutory injunction is vested in the High Court Judge and not the appellate Court whose function initially is one of review only and it will not overrule the decision of the Judge at first instance unless, broadly speaking, he has made an error of law or misconceived the facts, and except in those circumstances it must defer to the Judge's exercise of his discretion and must not interfere with it merely upon the ground that the members of the appellate Court would have exercised the discretion differently. It may also be relevant to reproduce an extract from that authority which reads:

> It might perhaps be convenient at this stage to concisely perpend the principles and policy underlying a Mareva order elucidated in a chain of related cases of which we need only refer to three. In *PCW (Underwriting Agencies) Ltd. v. Dixon & Anor.* [1983] 2 All ER 158 which sets out the policy underlying the Mareva jurisdiction, it was held that the sole purpose of a Mareva injunction was to prevent a plaintiff being cheated out of the proceeds of an action, should he be successful, by a defendant transferring his assets abroad or dissipating his assets within the jurisdiction, and that the remedy was not intended to give a plaintiff priority over those assets, or to prevent a defendant from paying his debts as they fell due, or to punish him for his alleged misdeeds or to enable a plaintiff to exert pressure on him to settle an action. This decision of Lloyd, J, went on appeal to the Court of Appeal [1983] 2 All ER 697] which however did not deliver a judgment but by consent allowed the appeal and varied the Judge's order, but the principles enunciated by Llyod's J, were unaffected by the consensual variation made in the light of the factual circumstances of that case. The English Court of Appeal has also held in *Campbell Mussells & Ors. v. Thompson & Anor.*, (The Times dated 30 May 1984) that a Mareva injunction was never intended to put a plaintiff in the position of a secured creditor and every case had to be dealt with on its own merits.
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> Mustill, J, held in *Ninemia Maritime Corporation v. Trave Schiffahrtsgesellschaft m.b.H. & Co. K.G.* [1984] 1 All ER 398 that: (1) Before a Mareva injunction will be granted, a plaintiff must show first that he has a good arguable case, which is more than being barely capable of serious argument, but not necessarily one that the Judge believes has got more than fifty per cent chance of success; (2) Before such relief is granted the plaintiff must secondly show that there is a risk that assets will be dissipated: he must demonstrate this by solid evidence e.g. that the defendant's previous actions show his probity is not to be relied upon or that the corporate structure of the defendant infers that it is not to be relied upon, but mere proof that the defendant is incorporated abroad will not suffice; (3) In reaching its conclusion, the Court should take into account the defendant's evidence as well as the plaintiff's.

In *Pacific Centre Sdn. Bhd. v. United Engineers (Malaysia) Bhd.* [1984] 2 MLJ 143 it had been decided that "because in many cases, there will be a practical difficulty of proving the requisite intent, it would be sufficient for the plaintiff to merely show a risk of disposal of assets which has the effect of frustrating the plaintiff in his attempt to recover the fruits of a judgment he is likely to obtain against the defendant." In *Chief Constable of Hampshire v. A and Ors.* [1984] 2 All ER 385 it was held that "although (per Waller and Oliver LJJ) s. 37(1) of the Supreme Court Act 1981 conferred on the Court power to grant an injunction to prevent the proceeds of crime being dissipated, that power could only be exercised where the asset in respect of which the injunction was sought could be identified as being or representing property which had been stolen or otherwise unlawfully obtained. On the facts (Purchas LJ concurring), the most that could be said was that only some of the moneys paid into the defendants' trading bank accounts had been obtained by unlawful means and since those moneys had been mixed with other moneys properly obtained by untainted trading activities the balance in the bank accounts was incapable of separation into legitimate and illegitimate elements. It followed that the chief constable was not entitled to the injunction sought.". The decision in *Raja Letchumi a/p Ramarajoo v. The Hongkong & Shanghai*

Banking Corporation [1989] 1 MLJ 415 was that "the injunction granted against the third defendant was in the nature of what is known as a Mareva injunction, that is, to freeze and seize the second defendant's bank account where the plaintiff's claim appears likely to succeed so that the plaintiff is not deprived of his anticipated judgment. However, in such a case where the proceeds of crime could not be realistically traced with any degree of accuracy the injunction would be refused." In this case, having considered the defendant's income and expenses, and his manipulation of the plaintiff's accounts, it can easily be taken for granted that there is a strong risk of the assets being dissipated. We are not really concerned about whether the proceeds of crime were being dissipated as the plaintiff is only asking for damages and not for the refund of the RM1.5 million.

As for whether a mareva injunction can be granted against a defendant resident in the country, Lord Denning MR in *Prince Abdul Rahman Bin Turki A1 Cedar v. Abu-Taxa & Anor.* [1980] 3 All ER 409 had stated:

> So I would hold that a Mareva injunction can be granted against a man even though he is based in this country if the circumstances are such that there is a danger of his absconding, or a danger of the assets being removed out of the jurisdiction, or otherwise dealt with so that there is a danger that the plaintiff, if he gets judgment, will not be able to get it satisfied.

In that case he had quoted from Sir Robert Megarry VC in *Barclay-Johnson v. Yuill* [1980] 3 All ER 190 who had said:

> ... the heart and core of the Mareva injunction is the risk of the defendant removing his assets from the jurisdiction and so stultifying any judgment given by the Courts in the action ... accordingly, the injunction will restrain the defendant from disposing of [the assets] even within the jurisdiction ... If, then, the essence of the jurisdiction is the risk of assets being removed from the jurisdiction, I cannot see why it should be confined to "foreigners", in any sense of that term ... Naturally the risk of removal of assets from the jurisdiction will usually be greater or more obvious in the case of foreign-based defendants, and so the jurisdiction has grown up in relation to them ... Is it really to be said that in relation to Mareva injunctions, there is one law for the foreigner and another for the English ... I do not intend to suggest that matters of nationality, domicile, residence and so on are irrelevant in Mareva applications. Any or all of them may be of considerable importance in so far as they bear on the risk of removal ... it must be remembered that since the first Mareva injunction was granted, there has been a significant change, in that within the last year the abolition of exchange control has made it easier for everybody to transfer assets abroad.

As for the injunction against a third party, it had been decided in *Galaxia Maritime SA v. Mineralimportexport The Eleftherios* [1982] 1 All ER 796 that "accordingly, it was an abuse of the Mareva jurisdiction to allow a plaintiff to serve a shipowner with a Mareva injunction relating to cargo owned, or alleged to be owned, by the defendant which was on board the shipowner's vessel in order to prevent the vessel sailing out of the jurisdiction with the cargo." But the facts there are quite different from those here. A closer authority would be *Bank of Queensland Ltd. v. Grant & Anor.* [1984] 54 ALR 306 which held that "a Mareva injunction was not available to restrain the defendant's wife from proceeding to register the matrimonial home in her name, or otherwise dealing with the property" and "recent exercise of the Mareva jurisdiction had stressed the need to minimize interference with rights of third parties.". However, that related to the registration of the matrimonial home and I would think the facts in *SCF Finance Co. Ltd. v. Masri & Anor.* [1985] Vol. 2 All ER 747 are more applicable. There it was decided that "nevertheless, the Court will always be astute to ensure that the rights of third parties are protected and, where it is asked by the plaintiff to include within the injunction assets which on their face belong to a third party, the Court will only

do so where there is good reason for supposing that the assets are in fact those of the defendant" and "where a plaintiff invites the Court to include within the scope of a Mareva injunction assets which appear on their face to belong to a third party, e.g. a bank account in the name of a third party, the Court should not accede to the invitation without good reason for supposing that the assets are in truth the assets of the defendant."

On the facts of this case, and after considering the cases cited, it was my view that the plaintiff had acted properly in filing for the *exparte* injunction urgently as to do otherwise would have enabled the defendant to dispose of the assets accordingly although he was at that time under police custody. It must be remembered that at that point of time, the defendant was actually only on remand for a maximum period of fourteen days and could of course have been released at any time if there was no evidence against him. He was therefore in the same position as a free man. Based on the statement of claim, the plaintiff's affidavits and the submissions of learned Counsel for the plaintiff and having considered the submissions of learned Counsel for the defendant and the defendant's affidavits, it was my considered opinion that the plaintiff had a good arguable case and that there was indeed a risk of dissipation of the assets if the order had not been made *exparte*. It was also essential, to my mind, to restrain any activity of the defendant's wife's bank account in these circumstances as although it was in her name, it was actually maintained by the defendant. I had also held that there had been no suppression of material facts in which case *Sari Artists Film Productions Sdn. Bhd. v. Malaysia Film Industries Sdn. Bhd.* [1974] 1 MLJ 123 and *KSM Credit & Leasing Sdn. Bhd. v. Datamaute (M) Sdn. Bhd. & Ors.* [1986] 1 CLJ 500 were not applicable.

Having concluded that the balance of convenience lay in favour of the plaintiff for the injunction to be continued until the trial, I had dismissed the defendant's application with costs. I had, however, ordered an early trial in the circumstances and had immediately fixed the hearing dates in March 1995.